

A party not bound by the agreement itself, has no right to call upon this court to enforce performance against the other contracting party, by expressing his willingness, in his bill, to perform his part of the agreement. His right to the aid of the court does not depend upon his subsequent offer to perform the contract on his part, but upon its originally obligatory character.

Where a party relies upon part performance, as a ground for the specific execution of a contract, he must show, by clear evidence, that the acts constituting such part performance are referable exclusively to the identical contract set up in his bill, or they will not avail him.

[The bill was filed on the 20th of May, 1850, and states that the complainant, in the year 1849, sold a body of wood growing on his farm, supposed to contain about 1,000 cords, to one Henry Myers, at the price of 45 cents per cord, and for which said Myers was to pay him at that rate as soon as 100 cords were cut, and so from time to time for every 100 cords, and was not to carry any away until paid for. That complainant gave Myers the privilege of cutting any hoop poles that might be found on the said wood land, and of building houses for his workmen. And said Myers agreed to get out of your orator's way, all the wood that was cut, although not fit for cording, in consideration of which, he was to have all that kind of wood without any further pay, as from said contract signed by Myers will appear, &c. That in pursuance of this contract, Myers proceeded to cut said wood, and up to this time has cut 592 cords, of which he has carried away 80 cords, and burned the residue into coal, of which he has hauled away one pit, and threatens to haul away two more, now nearly ready for that purpose. That Myers has neglected and refused to pay to your orator, said sum of 45 cents a cord, for every 100 cords, and has in fact, only paid \$30, and has, when applied to to fulfil his said contract, under various pretexts and promises, evaded the same, and has neglected to haul away the wood not fit for cord wood. That he is advised that he has a lien on said wood for the payment of said purchase money, and a right to the specific performance by said Myers of said contract. The bill then prays for a specific performance of this contract, and for an injunction restraining said Myers from cutting any more wood, and from hauling what has already been cut, and for further relief. The